

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-220446

DATE: February 6, 1986

MATTER OF: Anchor Continental, Inc.

DIGEST:

1. Contracting agency reasonably concluded that adequate small business competition could be expected so as to justify setting aside certain line items in the solicitation exclusively for small business participation where bids from four responsible small businesses were received on identical line items in the prior year's procurement.
2. The contracting agency need not make determinations tantamount to affirmative determinations of responsibility on expected small business bidders before deciding to set IFB line items aside for small business. The agency is only obligated to make an informed business judgment that at least two responsible small business bidders will compete and will offer reasonable prices.

Anchor Continental, Inc. (Anchor), a large business manufacturer of fiberglass-reinforced tape, protests the restriction in invitation for bids (IFB) No. 2FC-EAF-A-A3421-S, setting aside certain line items for small business. We deny the protest.

The IFB was issued by the General Services Administration (GSA) as a requirements contract for the supply of various types of tape. The IFB contained 64 line items, of which 1 through 12 and 20 through 62 were set aside solely for small businesses. Within the set-aside portion, line items 1 through 12 were for quantities of aluminum-backed, pressure-sensitive tape; line items 20 through 36 were for tapes for various specified applications; line items 37 through 47 were for polyester filament reinforced tape; and line items 48 through 62 were for fiberglass filament reinforced tape.

Anchor contends that the set-aside of these line items for small business was improper because at the time GSA made

034478

its set-aside decision the agency could not have had a reasonable expectation that bids on these line items would be submitted by at least two responsible businesses as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502 (1984). With respect to line items 48 through 62 in particular, Anchor alleges that there are only two small business manufacturers of fiberglass filament tape in the United States to start with, and that one of the two, RJM Manufacturing, Inc., does not have the requisite resources and production facilities to perform a contract of the magnitude called for by the IFB. According to Anchor, RJM has only 52 employees and its fiscal year 1984 sales were only \$10 million; Anchor estimates that the awarded contract for the supply of the government's fiberglass filament tape requirements will be worth approximately \$3.5 million. In addition, Anchor points out that RJM had been awarded a large contract for the supply of polyester tape in GSA's prior fiscal year procurement for similar estimated quantities of tape and argues that GSA should have taken into account the fact that RJM would likely also be competing in the instant procurement for the award of a contract for polyester tape when deciding whether to set aside the fiberglass filament tape portion of it.

GSA takes the position that the decision to set aside a significant portion of the IFB for small business was based on ample information which reasonably led the agency to conclude that bids at reasonable prices would be received from a sufficient number of small businesses. With respect to line items 48 through 62, specifically, GSA states that of the eight bids in the prior procurement that were received for fiberglass filament tape, five were from small business firms, including RJM. Based on the extent of the small business participation in the prior procurement, GSA determined that such tape should be set aside for small business; GSA adds that its decision to set aside was concurred in by its Small Business Administration representative.

For a total small business set-aside, the regulations require that there be a reasonable expectation that offers will be obtained from at least two responsible small business concerns and that awards will be made at reasonable prices. FAR, 48 C.F.R. § 19.502-2. The decision to set aside a procurement for small business is basically a business judgment within the broad discretion of the contracting agency, so that we will not question a decision to set aside unless a clear showing is made that the agency abused its discretion. Burrelle's Press Clipping Service, B-199945, Mar. 2, 1981, 81-1 C.P.D. ¶ 152.

We see no abuse of discretion by GSA in its decision to restrict the protested line items to small businesses. At the outset, we note that while Anchor objects to all the line item set-asides, the company only gives specific reasons with regard to why it believes the set-aside of line items 48 through 62 was inappropriate. In this regard, the types of tapes covered by line items 1 through 12 and 30 through 47 had been set aside by GSA in the prior fiscal year procurement and the agency had successfully received bids on these tapes from several responsible small businesses. Once a product has been acquired successfully by an agency on the basis of a small business set-aside, the procurement regulations provide that in subsequent procurements, the product should be acquired on the basis of a repetitive set-aside, unless the agency cannot expect reasonably priced offers from at least two responsible small business concerns. FAR, 48 C.F.R. § 19.501(g). Since Anchor gives us no basis to question GSA's decision to continue the set-aside of these items, or to set aside line items 20 through 29, we will not review this aspect of the protest further. See Multinational Business Services, Inc., B-221362, Jan. 9, 1986, 86-1 C.P.D. ¶ ____.

Turning to Anchor's protest against the set-aside of line items 48 through 62, prior acquisition history is an important factor in determining whether a reasonable expectation of small business competition exists to justify a set-aside. FAR, 48 C.F.R. § 19.502-2. The record shows that in the prior fiscal year's procurement of fiberglass tape, GSA actually received bids from four responsible small businesses. Although two of those firms were regular dealers instead of manufacturers--Anchor's complaint is based in large part on its contention that there are only two small business manufacturers of fiberglass tape in the United States--responsible small business dealers are eligible for award under a small business set-aside. The Small Business Administration regulations at 13 C.F.R. § 121.3-8 (1985), which provide that a nonmanufacturer bidding on a small business set-aside is considered to be small when it meets the applicable size standard for number of employees and offers the products of a small business manufacturer.

With regard to the responsibility of RJM for purposes of restricting of fiberglass-reinforced tape items 48 through 62, a contracting agency need not make determinations tantamount to affirmative determinations of responsibility before determining to set aside a procurement for

33445

exclusive small business participation. Fermont Division, Dynamics Corp. of America; Onan Corp., 59 Comp. Gen. 533 (1980), 80-1 C.P.D. ¶ 438. While the standards of responsibility enunciated in the FAR may be relevant in making a set-aside determination, the agency is only obligated to make an informed business judgment that there is a reasonable expectation of acceptably priced offers from a sufficient number of responsible small businesses. Id.

Here, the record reveals that RJM was the low bidder on the line items for polyester tape in the prior procurement. An award was made to RJM following a favorable preaward survey of the company, and RJM successfully performed the contract. Irrespective of the fact that GSA received bids on those items from a total of four eligible firms on that procurement, we see nothing wrong with GSA, in determining whether a set-aside for fiberglass tape was appropriate, relying on its past experience with RJM and its finding that RJM was responsible for award in the prior procurement, even though the award was for polyester tape rather than fiberglass tape. In addition, we note that in comments on the protest RJM advises that Anchor's description of RJM's size, capacity, and finances is wrong, and that RJM in fact can produce substantially more tape than called for by the solicitation.

In view of GSA's experience in procuring fiberglass-reinforced tape, the agency's expectation of small business competition adequate to satisfy the set-aside regulations was not unreasonable. The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel